

M E M O R A N D U M
DSS-524XL

TO: All NYC Hearing Officers and Supervising Hearing Officers
DATE: August 23, 1996

FROM: Russell J. Hanks
RJH
SUBJECT: Hearing Decisions

As you are undoubtedly aware, the volume of decisions issued by our office contains a significant and increasing percentage of "general remands" and "Rodriguez" withdrawals. These decisions are problematical in that they create difficult compliance monitoring situations, often result in a repeat of the same action with subsequent hearing requests, and in "general remand" cases are of increasing concern to The United States Department of Agriculture, Food and Nutrition Service (FNS).

For these reasons it is critical that we strive to conduct hearings and issue decisions that provide specific relief, and finality, to the original hearing request.

In notice based hearings, the terms of the stipulation in Rodriguez v. Blum require that the Agency withdraw its determination to discontinue, reduce or restrict the Appellant's public assistance if it does not appear at the hearing with the Appellant's complete relevant case record.

"Complete relevant case record" is defined as "that portion of an appellant's case record maintained by the agency in each of the following areas pertinent to the issue or issues at the hearing: (i) face to face recertification, (ii) income maintenance, (iii) employment." What constitutes a "complete relevant case record" must be determined on a case by case basis. It is not necessarily the entire record for the client or even the entire record on the underlying subject matter. An assessment should be made by the hearing officer in each case to determine if all documents pertinent to the issue or issues are present at the hearing. If the hearing officer determines that all relevant documents are present, the hearing should proceed. In the event that all documents, pertinent to the issue or issues at the hearing, are not present, the Agency must withdraw its notice pursuant to Rodriguez. If the hearing officer concludes that the documents brought by the agency are not the complete relevant case record, but the agency will not withdraw the notice because it thinks it has brought the relevant case record, the hearing officer's decision should specify what documents were available at the hearing, why the documents were insufficient and what additional documents should have been included.

In situations where the hearing officer determines that the complete, relevant case record is present and proceeds with the hearing, the issue may expand or the record may develop in such a way that additional documents, not present, become pertinent. In such circumstances a recess (to access WMS) or an adjournment (to obtain documents) may be appropriate. Such an adjournment is only appropriate when there is a strong expectation that the district will obtain the additional documents and that the appellant will not be unreasonably harmed by the delay. Multiple adjournments are not justifiable for this purpose.

In non-notice based hearings, every effort should be made to develop a record sufficient to permit the issuance of a decision containing a specific directive.

These approaches should improve our ability to provide specific relief to Appellants, give clearer direction to Compliance staff and address the concerns of FNS. They should also help reduce the volume of repetitive hearing requests which is critical in these times of record request level activity.

Please consult with your supervisor if you have any questions

RJH:mh

cc: John E. Robitzek
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